

THE COUNTY BULLETIN

And Uniform Compliance Guidelines

ISSUED BY STATE BOARD OF ACCOUNTS

Vol. No. 339

October 2002

REMINDER OF ORDER OF BUSINESS

October

- 1 Last date for County Board of Tax Adjustment [except Marion County and in a county containing a second class city (November 1)] to complete its duties. (IC 6-1.1-17-9(a))
- 14 Columbus Day - Legal Holiday (IC 1-1-9-1)
- 15 Last day to make pension report and payment for third quarter by counties participating in Public Employee's Retirement Fund.
- 20 Last day to report and make payment of State Income Tax withheld in September to Indiana Department of Revenue.
- 31 Last day to file quarterly unemployment compensation report with the Indiana Employment Security Division.

Last day to report and make payment of balance of Federal Income Tax withheld in the third quarter to Internal Revenue Service.

Last day Annual Tax Sale can be held. [IC 6-1.1-24-2(a)(8)]

November

- 1 Issue tax sale certificates to County for properties offered in tax sale for two consecutive years and unsold at the 2002 Tax Sale. (IC 6-1.1-24-6)
- Last date for County Board of Tax Adjustment in Marion County and in a county containing a second class city to complete its duties. (IC 6-1.1-17-9(a))
- Last day for county auditor to certify to the division of state court administration the amount, if any, the county will be providing to the judge's salary during the ensuing calendar year. (IC 33-13-12-7.1(b))

- 5 Election Day – Legal Holiday (IC 1-1-9-1)

- 11 Veterans' Day - Legal Holiday. (IC 1-1-9-1)

- 12 Last day for paying second installment of taxes without penalty. Start preparing for settlement of second installment tax collections. (IC 6-1.1-37-10)

- 13, 14, & 15 County Auditor's Fall Conference - Indianapolis, Indiana

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REMINDER OF ORDER OF BUSINESS
(Continued)

November

- 20 Last day to report and make payment of State Income Tax withheld in October to Indiana Department of Revenue.
- 28 Thanksgiving Day - Legal Holiday. (IC 1-1-9-1)

December

- 1 On or before this date, certify names and addresses of persons who have money due to them for salaries, wages or other reasons to County Treasurer, for determining if such persons owe delinquent taxes. (IC 6-1.1-22-14)

At regular meeting of Board of County Commissioners consideration may be given to appointments of certain personnel and to bids and awards for highway supplies, materials and equipment for 2003.

- 20 Last day to report and make payment of State Income Tax withheld in November to Indiana Department of Revenue.
- 25 MERRY CHRISTMAS!! Legal Holiday. (IC 1-1-9-1)
- 31 Review year-end duties.

Post and close all records completely and promptly.

The Auditor should balance with the Treasurer and verify the amount of cash in the Treasurer's office, if field examiners or a successor Treasurer are not available to verify the cash count.

Cash Change Funds issued to any county officer whose term expires must be returned to the County General Fund.

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RECORDING OF COPIES

We receive many inquiries regarding county recorders recording copies of documents. If the original of a document cannot be located, a copy of the document can be recorded.

IC 36-2-11-16 states, "The recorder may record a copy produced by a photographic process of any document presented for recording if (1) the document complies with other statutory recording requirements; and (2) the copy is a clear concise and unobstructed copy. All copies accepted for recording shall be marked as copies by the recorder."

In many instances, it is very difficult to distinguish between a copy and an original. After a copy of a document is photocopied, it is virtually impossible to tell whether an original or a copy was photocopied. For this reason, prior to recording the copy of the document, it should be clearly marked "Copy." If the person who presents the copy for recording does not want the word "Copy" written on the document, one way this could be handled is to write "Copy" on a self stick removable note, place the self stick removable note on the copy, photograph the copy, and then remove the self stick removable note.

SOIL AND WATER CONSERVATION DISTRICT EXPENSE

There seems to be some confusion over whether the county should pay the expenses of soil and water conservation districts. IC 14-32-4-18 states that an employee of the district is considered a county employee and permits payment of salaries and fringe benefits of soil and water conservation district employees. An employee of a district whose position is funded entirely from sources outside the county in which the employee works solely on the basis of the funding of the employee's position is not considered an employee of the county. Except as stated in IC 14-32-5-8, all other operating expenses are to be paid by the district.

IC 14-32-5-8 states, "The fiscal body of each county that contains a district in whole or in part may (our emphasis) appropriate money for the use of the district serving the county from which the appropriation is to be made."

County auditors are not to pay claims of any kind for soil and water conservation districts except payroll and fringe benefit claims (IC 14-32-4-18) and claims filed for the grant of financial assistance (IC 14-32-5-8) provided in the appropriation by the county council.

MONIES FOUND ON DECEASED PERSONS

IC 36-2-14-11 applies to money or other personal property owned by a deceased person whose death is subject to a coroner's investigation or found on a body or found at the scene of the death. If the money or personal property is not claimed by a person entitled to it, the coroner shall take possession of it, publish a description and name, if known, of the deceased person, and make a reasonable search to find a person who is entitled to the money or other personal property.

If a person who is entitled to the money cannot be located, the coroner shall deliver the money to the county treasurer for deposit in the county general fund.

If a person who is entitled to the other personal property cannot be located, the coroner shall deliver the personal property to the sheriff for sale at any auction that the sheriff conducts under law. The proceeds of the sale shall be deposited in the county general fund.

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RETAINAGE ON PUBLIC CONTRACTS IN EXCESS OF \$100,000

IC 36-1-12-14 requires that when public works contracts are awarded by the county for certain public works or improvements and such contracts exceed \$100,000, the retainage withheld from payments to the contractor shall be placed in an escrow account with an escrow agency, to be invested and accounted for in the manner provided in the statute. This statute applies to the construction, alteration, or repair of all buildings or other improvements the cost of which is paid from public funds or from special assessments imposed and levied on real estate, land and lots benefited thereby but shall not include highways, roads, streets, alleys, bridges, and appurtenant structures situated on street, alleys and dedicated highway rights-of-way.

The statute requires a written agreement to be executed between the board (defined to mean the board or officer of a political subdivision or agency having the power to award contracts for public work), the contractor and the escrow agent selected by mutual agreement between the affected parties. The statute sets out the matters to be covered by the terms of the agreement and further provides that the escrow agent be "a bank, savings and loan institution, or the state..."

Where a contract is subject to the provisions of this law it is required that at the time any retainage withheld the amount of the retainage shall be placed in an escrow account with the escrow agent, to be promptly invested by the escrow agent in its discretion. The escrowed principal and the income from the investments shall be held by the escrow agent until receipt of a notice releasing the funds in accordance with the terms of the law and the agreement.

Where a bank or savings and loan institution is selected as escrow agent, the amount of the retainage withheld shall be paid by warrant to the escrow agent and, when paid, shall be treated in the same manner as any other payment on the contract, with the escrow agent being required to deposit, invest and otherwise account for the escrowed principal and interest in accordance with the law and the terms of the agreement. The escrow account will not be carried on the records of the county.

The law provides that the escrow agent shall be compensated for its services as the parties may agree in an amount comparable with fees being charged for the handling of escrow accounts of similar size and duration. The fee shall be paid from the escrowed income of the escrowed account.

DEATH AND MORTGAGE RELEASE LISTS

To enable the county to administer the change in filing exemptions the following information is required to be furnished the county auditor:

1. IC 16-37-3-9 (c) states: "The local health officer shall, not later than January 31, April 30, July 31, and October 31 of the year, furnish to the county auditor the records of all deaths within the officer's jurisdiction that occurred during the previous three (3) months."
2. IC 36-2-11-24 states: "The county recorder shall, on or before the 20th day of each month, furnish the county auditor a list of the mortgage releases recorded during the prior month. The list shall set forth the full name of the mortgagor, the book and page numbers of the original mortgage, the amount being released, and the date of the release."

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PAYMENT OF FUNDS DUE DECEASED PERSON IC 29-1-8

This office is periodically contacted regarding the correct method of making payment of money due an official, employee, or other person who has died. If an executor, administrator or personal representative has been designated by the court, payment should be made to such executor, administrator or personal representative.

IC 29-1-8-1 states in part:

- (a) "Forty-five (45) days after the death of a decedent and upon being an affidavit that complies with subsection
- (b), a person:

- (1) indebted to the decedent; or
 - (2) having possession of personal property or an instrument evidencing a debt, an obligation, a stock, or a chose in action belonging to the decedent;

shall make payment of the indebtedness or deliver the personal property or an instrument evidencing a debt, an obligation, a stock, or a chose in action to a person claiming to be entitled to payment or delivery of property of the decedent.

- (b) The affidavit required by subsection (a) must be an affidavit made by or on behalf of the claimant stating that:
 - (1) the value of the gross probate estate, wherever located (less liens and encumbrances) does not exceed twenty-five thousand dollars (\$25,000);
 - (2) forty-five (45) days have elapsed since the death of the decedent;
 - (3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and
 - (4) the claimant is entitled to payment or delivery of the property. ..."

Following is a suggested format for an affidavit for transfer of assets without administration. Since this is a legal question, please discuss this article and the suggested affidavit with your legal counsel.

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PAYMENT OF FUNDS DUE DECEASED PERSON - (Continued)

The affidavit furnished should be similar to the following:

STATE OF INDIANA) SS:
COUNTY _____)

**AFFIDAVIT FOR TRANSFER OF ASSETS
WITHOUT ADMINISTRATION**

_____, being first duly sworn upon _____ oath deposes and says:

1. That _____ died on the _____ day of _____ 20____
(testate), (intestate) while domiciled in _____ County, Indiana.
2. That no petition for the appointment of a personal representative
of his estate is pending or has been granted.
3. That forty- five (45) days have elapsed since the death of said decedent.
4. The value of the gross probate estate less liens and encumbrances
thereon does not exceed twenty-five thousand dollars (\$25,000).
5. That this affiant is a (widow) (widower) (distributee) of said decedent
and is entitled to receive without administration the following listed
property from the person, firm or corporation listed opposite said
property subject to the liens and encumbrances thereon.

KIND OF PROPERTY	WHERE LOCATED	VAULE	LIEN OR ENCUMBRANCES IF ANY	NAME AND ADDRESS OF PERSON, FIRM OR CORPORATION HOLDING PROPERTY OF DECEDENT
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

This affidavit is made for the purpose of inducing the above named holders of said decedent's
property to turn said property over to this affiant as provided by law.

AFFIANT

ADDRESS

Subscribed and Sworn to before me this _____ day of _____ 20 ____

Notary Public*

County of Residence _____
My commission expires _____

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LUCRATIVE OFFICES

Official Opinion No. 13 (June 4, 1970) of the Attorney General points out that dual office holding involves at least six major questions and three particular sections of the Indiana Constitution. The questions are:

1. Is each position a lucrative office within the meaning of the Indiana Constitution? (Article 2, Section 9 of the Indiana Constitution)
2. Is such office-holding in violation of the doctrine of the separation of powers? (Article 3, Section 1 of the Indiana Constitution)
3. Does such office-holding involve a judicial office, and another office of trust and profit under the State? (Article 7, Section 16 of the Constitution of Indiana)
4. Are such offices incompatible with each other?
5. Is there a conflict of interest?
6. Would such office-holding be against public policy?

This article is not intended to pass upon which offices are lucrative nor to discourage allowing one person to perform services for more than one department or office if such is permissible. It is intended to suggest a test through which any particular applicable situation should favorably pass before the same person is employed in more than one capacity or enters upon the holding of more than one office.

If a question arises concerning this matter, the county attorney should be consulted.

**SPREADSHEET SOFTWARE UTILIZATION TO
GENERATE EXACT REPLICAS OF PRESCRIBED FORMS**

The Indiana State Board of Accounts prescribes the forms to be utilized in accounting systems, but does not specify the source from which the prescribed forms must be obtained. With the current capabilities of spreadsheet software, the use of spreadsheet software may, in some instances, be an acceptable method of generating exact replicas of prescribed forms.

Spreadsheet may not be utilized to replace functionality that should be an integral function of a computerized accounting system or replace a controlled document for the entry of accounting information. Examples of this type of form include forms that are required to be either prenumbered by an outside printing supplier or numbered by the accounting system with sufficient controls to prevent unauthorized generation of the form or duplication of control numbers on the forms. These forms include receipts, checks, purchase orders and material receiving documents. In addition, spreadsheets should not be utilized to generate control documents such as ledgers, receipt registers, check registers, outstanding check list and similar reports.

Under no circumstances is it acceptable to implement an electronic interface from spreadsheet software directly to the information files of an accounting system without being processed through the same edit and control features as are utilized to ensure the accuracy of information entered manually into the accounting system.

Exact replicas of prescribed forms generated by spreadsheet software may be utilized for forms incidental to the computerized accounting system. Examples of these forms include travel vouchers, attendance records, and fixed asset records.

If you have any questions on the utilization of spreadsheet software to replicate a specific prescribed form, please contact our Information Technology Services department at (317) 232-4964.

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GHOST EMPLOYMENT

The Offenses Against Public Administration Act as found in the Indiana Code at Title 35, Article 44 contains a section on ghost employment in Chapter 2. Section (4) states “(a) A public servant who knowingly or intentionally: (1) hires an employee for the governmental entity that he serves; and (2) fails to assign to the employee any duties, or assigns to the employee any duties not related to the operation of the governmental entity; commits ghost employment, a Class D felony. (b) A public servant who knowingly or intentionally assigns to an employee under his supervision any duties not related to the operation of the governmental entity that he serves commits ghost employment, a Class D felony. (c) A person employed by a governmental entity who, knowing that he has not been assigned any duties to perform for the entity, accepts property from the entity commits ghost employment, a Class D felony. (d) A person employed by a governmental entity who knowingly or intentionally accepts property from the entity for the performance of duties not related to the operation of the entity commits ghost employment, a Class D felony. (e) Any person who accepts property from a governmental entity in violation of this section and any public servant who permits the payment of property in violation of this section are jointly and severally liable to the governmental entity for that property. The attorney general may bring a civil action to recover that property in the county where the governmental entity is located or the person or public servant resides. (f) For the purposes of this section, an employee of a governmental entity who voluntarily performs services: (1) that do not: (A) promote religion; (B) attempt to influence legislation or governmental policy; or (C) attempt to influence elections to public office; (2) for the benefit of: (A) another governmental entity; or (B) an organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; (3) with the approval of the employee’s supervisor; and (4) in compliance with a policy or regulation that: (A) is in writing; (B) is issued by the executive officer of the governmental entity; and (C) contains a limitation on the total time during any calendar year that the employee may spend performing the services during normal hours of employment; is considered to be performing duties related to the operation on the governmental entity.”

The State Board of Accounts recommends that all governmental entities carefully maintain accurate prescribed or approved employment, service and other records for all persons employed so that documentation is available to substantiate all duties assigned and all amounts paid to each.

OFFICIALS’ SIGNATURES ON CLAIMS, WARRANTS, AND OTHER OFFICIAL DOCUMENTS

The State Board of Accounts is often asked to approve the use of rubber stamps or other devices for affixing facsimile signatures of public officials on claims, warrants, and other official documents.

The decision as to whether or not the number of documents to be signed justifies the use of a rubber stamp or other device for affixing his/her signature must be made by each official.

Since each official is responsible for his/her signature, a rubber stamp or other signing device should be used only under the closest direction of the official and must be properly safeguarded when not in use.

SEATBELT VIOLATIONS

For each seatbelt violation under IC 9-19-10-2, IC 9-19-11-2, IC 9-19-11-3, a person commits a Class D infraction. IC 34-28-5-4 allows a court to enter a judgment of up to twenty-five dollars (\$25) for each Class D infraction. All seatbelt violation cases would be considered moving traffic violations under IC 9-30-3-14 and would be required to be heard in a circuit, superior, county, city or town court or traffic violations bureau designated by these courts. Furthermore, IC 34-28-5-5 (c) states that all funds collected as judgments for violations of statutes defining infractions shall be deposited in the state general fund.

Additionally, in the Home Rule Law IC 36-1-3-8 states that a unit of government does not have the power to prescribe a penalty by local ordinance for conduct constituting an infraction.

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QUESTIONS AND ANSWERS FROM COUNTY CLERK'S ANNUAL CONFERENCE

- Question #1:** Must the Premarital Examination Certificate be retained by the clerk? May it be given back to the applicant after staff verifies it? If the form must be retained, how long must this form be retained?
- Answer #1:** Clerk must retain this certificate in their office until approved for destruction by your local public records commission on the PR-1.
- Question #2:** Can the \$2.00 clerk's perpetuation fee be charged on marriage licenses and passport processing fees?
- Answer #2:** No, the document storage fee of \$2 that goes into the Clerk's Perpetuation Fund is only charged on civil, criminal, or infraction and ordinance violations.
- Question #3:** With postage increases, we spend so much on certified mail. Some filings have several defendants and we may spend \$20 on a \$39 filing in postage. Can't the plaintiff's become responsible for providing needed postage for each filing?
- Answer #3:** IC 33-19-3-5 states that court costs include service of process by certified mail.
- Question #4:** Do the Document Storage Fees also raise to \$5.00 then \$7.00 along with the Automated Record Fee's?
- Answer #4:** No, the document storage fee did not change. It remains at \$2.
- Question #5:** Are most clerks collecting the \$25 clerk's service fee for pre-trial deferrals, and if so where does it go? County General?
- Answer #5:** There is not a pre-trial deferral. You can either have a pre-trial diversion program for criminal cases or a deferral program on infraction and ordinance cases. You collect a \$25 fee on deferral cases and \$50 fee on pre-trial diversion cases. Both of these fees are considered court costs and are split 70% to the state, 27% to the county, and 3% to the city and town court cost fund.
- Question #6:** Tax Warrants-Do they need to be put in a judgment book? Or can they be indexed in their own Tax Warrant Book with satisfaction, then put on back of Green Tax Warrant? Or index in computer and a Tax Warrant Book?
- Answer #6:** Tax warrants should be entered in a Judgment Book. Depending on the volume you may want to have a separate tax warrant book for this purpose. Several years ago your association created a manual covering this subject. Contact John Newman if you would like a copy of this manual.

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QUESTIONS AND ANSWERS FROM COUNTY CLERK'S ANNUAL CONFERENCE - (Continued)

- Question #7:** Can NSF's and ISETS's errors be recouped from the states share of the annual support fees? Or can they only be recouped from the county's share? If only from county share, what if the error is caused by the state on a IV-D case?
- Answer #7:** These can only be reimbursed from the county share of the support fee. Even if it is a IV-D case that had the error of bad check, 45 CFR 92.25(g). The uses of program income does not allow the federal and state share of this fee to be used in this manner.
- Question #8:** The clerk is required to charge a \$1.00 per copy of a record in a file. If the file is at court and a person requests a copy from a court employee, does the court employee charge the \$1.00 per copy or does the court employee follow the county ordinance for copies? Or should the court employee not be taking any money and the transaction must happen in the clerk's office?
- Answer #8:** If the court employee takes the fee for copies then they will be charging based on the county ordinance. It would be a possibility that no copies would be made by the court and the person would be required to go to the clerk's office.
- Question #9:** Do income-withholding orders have to be sent by certified mail?
- Answer #9:** No, IC 31-16-15-4 just states that you must send a written notice. There is no indication that it must be by certified mail.
- Question #10:** Can the prosecutor certify child support payment histories? Currently for the certification to be printed by the ISETS system it must be requested by someone with a clerk's ID. If the prosecutor does not have a clerk's ID (which they shouldn't have), then the payment history they print out must have a certification stamp by the clerk. Very cumbersome when a payment history is the same whether requested by the prosecutor or clerk.
- Answer #10:** They could be certified by the prosecutor, but as clerk we don't believe that it is in your best interest to do this. Also, you definitely wouldn't want to be giving out your password.
- Question#11:** Jury Pool, that is effective January 1, 2003, do we have to use other sources other than voter registration? Any suggestions on the set up and how to do it?
- Answer #11:** This should be addressed by your judge or the State Court Administration.
- Question #12:** To get rid of those duplicate ISETS receipts, do we have to do a retention schedule on them or can we just throw away?
- Answer #12:** You cannot destroy any records without either following your approved retention schedule or complete Form PR-1 and submit to your local commission.

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QUESTIONS AND ANSWERS FROM COUNTY CLERK'S ANNUAL CONFERENCE - (Continued)

Question #13: On criminal cases decided after July 1 but filed prior to July 1, do we collect the \$5 automated record keeping fee or \$2?

Answer #13: The statute gives no direction on this. Consult with your judge and then be consistent.

Question #14: On electronic filing of tax warrants, what will the procedure be if you send us a tax warrant that is not our county? Now I write on the voucher "Not Elkhart County" attach the warrant and send it back to you. If we decide to go with the electronic filing, can we ask IDR to hold off on sending us new ones until we are caught up on the ones we have now? (The ones we are manually entering into the computer). Can Indiana Workforce Development tax warrants be filed electronically? Will the tax warrant information be available for the public, such as abstractors, credit bureaus, etc. over the Internet?

Answer #14: You should contact the Indiana Department of Revenue and the Indiana Department of Workforce Development for the answers to these questions.

QUESTIONS AND ANSWERS FROM COUNTY AUDITOR'S ANNUAL CONFERENCE

Question #1: Since we no longer collect \$2.00 for non-tax and \$1.00 for mortgage deductions, is the state going to furnish the forms? It seems the state keeps taking fees away from us, but we are still required to furnish the forms?

Answer #1: We are not aware of the state changing it's policy to begin providing forms for each of the counties.

Question #2: Does every county have a Chief Deputy? Is the Chief Deputy considered a Lucrative Office?

Answer #2: IC 36-2-16-4 states the County Auditor is entitled to appoint one first or chief deputy, if authorized by the county fiscal body. IC 5-6-4 states that an appointed deputy is not a lucrative office under the Constitution.

Question #3: Can 50 cents from each dog tag go to the support of the county dog pound?

Answer #3: Yes, If an ordinance to that effect is adopted by the county council under IC 15-5-9.

Question #4: Can a public meeting be held with one member off site and call in by phone?

Answer #4: No, statutes specifically allow 6 state agencies the ability to use teleconferencing. Therefore, it is inferred that everyone else does not have these powers.

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QUESTIONS AND ANSWERS FROM COUNTY AUDITOR'S ANNUAL CONFERENCE - (Continued)

Question #5: For a meeting quorum, can board members be present/available via a speakerphone for voting purposes?

Answer #5: Same as Answer #4

Question #6: We have meetings and committee meetings that are taped. Can these tapes be destroyed, there are minutes that are typed and kept? (These are audio tapes.)

Answer #6: You may destroy these tapes or reuse them only in accordance your approved records retention schedule

Question #7: When I distribute the city\town court costs, do I use the 2000 census figures?

Answer #7: Yes, the 2000 census figures became effective April 1, 2002.

Question #8: Concerning P.L. 50 – Will the county be allowed to add a fee for collecting any charges certified to the auditor as is currently allowed for collecting sewer fees?

Answer #8: No

Question #9: If a county owns a Tax Sale certificate, can a county accept payments to redeem property?

Answer #9: Yes, the redemption period is from the date of the tax sale to the date 120 days after the sale.

Question #10: Can just anyone prepare a deed?

Answer #10: Yes, County Bulletin July 2001, Volume 333, Page 10.

Question #11: Do we have the right to refuse a deed that is not filled out all the way on their part?

Answer #11: IC 6-1.1-5-4 requires the deed to contain:
1. A description of property conveyed.
2. Date of conveyance.
3. Names of the parties.
4. Post Office address of grantee.
IC 36-2-9-18 requires the tax I.D. number of the affected real property. If these items are incorrect or missing you cannot do your job in posting the transfer and entering for taxation. Therefore, you may have to refuse to enter the deed.

Question #12: Who is to make the address changes in the system? What kind of records should be kept?

Answer #12 Under IC 6-1.1-24-4, If an owner of real property in the County they are to notify you of their correct address. Therefore, the County Auditor is to keep a record of addresses.

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QUESTIONS AND ANSWERS FROM COUNTY AUDITOR'S ANNUAL CONFERENCE - (Continued)

- Question #13:** What do we do with mineral rights only? These just keep going w/penalty and interest added yearly – at one time were they to be deleted-, and can they be deleted now?
- Answer #13:** Under IC 6-1.1-25-4(g), Certify these to the Clerk of the Circuit Court and collect as personal property.
- Question #14:** Would it be possible for the appropriate state agency to send the auditor of each county a list of all state called meetings with dates each year for each office eligible? (Could be advantageous as backup for auditor.)
- Answer #14:** State Board of Accounts called meetings are on our website. You will need to contact the other appropriate state agencies with your request. Each state agency sends a certification letter to the attendees.
- Question #15:** The sheriff's department comes in for money; they are going out of state to pick up a subject held on our warrant, they estimate their expense, we give them a check, they bring the receipts and left over money back. Can we do this out of the County General Fund?
- Answer #15:** Some counties have this type of procedure in their travel policy. We do not take exception during our audits of counties as long as the accountability is there.
- Question #16:** One of our judges has hired a new public defender. This person also works in 2 other counties. We are not sure how many hours are in our county. It is a salaried position in the court's budget. How do we determine if this person qualifies for PERF, health insurance, etc? The judge and new employee are unclear as to how much time will be spent in our county. Is she self employed?
- Answer #16:** Under IC 33-9-10-2, the Judge can contract with an attorney and schedule a fee. If this is the case the person would be considered self employed and, therefore, not entitled to fringe benefits. Under IC 33-9-15-1, if the county public defender board appointed the public defender the person is probably an employee and entitled to benefits.
- Question #17:** Do we need to keep two identical sets of tax duplicates? For example, Auditors and Treasurers as permanent records?
- Answer #17:** No, by law the County Auditor is to deliver the tax duplicate to the County Treasurer. Technically, the County Treasurer's duplicate would be the official public record.
- Question #18:** In the event of a very close vote during phase 2 of a remonstrance process, can the auditor's findings be challenged, and if so, how? Are both sides entitled to challenge the verification of signatures on the opposition's petitions? Is this done in the Auditor's office, the courts, or what?
- Answer #18:** Anything you do can be challenged by either side of the remonstrance process. This will have to be done in the courts.

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QUESTIONS AND ANSWERS FROM COUNTY AUDITOR'S ANNUAL CONFERENCE - (Continued)

- Question #19:** My second deputy is running for County Recorder. If she wins, my third deputy is going with her to be first deputy. If I would need their help in the evenings or weekends, can I pay them?
- Answer #19:** The elected person could not be paid for this additional time. The first deputy could be paid for this additional time. The amount to be paid will have to be authorized by the salary ordinance and the employees will need to keep accurate time records.
- Question #20:** The Commissioners want to put a line item in their budget for the maintenance, cleaning, etc, of ditches. This "Drainage Maintenance" line item would not be for any specific ditch. Is this line item allowable?
- Answer #20:** Yes, they could probably do this but why would they want to. Doing it this way uses tax dollars of people not on the ditch. This doesn't seem appropriate. However, setting up a maintenance assessment for all parcels on the ditch, allows just those properties benefiting from the ditch will pay.
- Question #21:** Can you work in the Auditor's office and be elected to Township Assessor?
- Answer #21:** Legally yes. The employee would be required to account for their hours in each office to support the amount paid for each position.
- Question #22:** Recorder's Overpayment: Ex: overpayment of \$10.00, recorder keeps \$3.00 and refunds \$7.00, or refunds \$10.00? Is it the statute that the overage of \$3.00 goes to General Fund?
- Answer #22:** In your example, the recorder will keep \$3.00 and would refund \$7.00. The statute does not specifically say these overages go to the General Fund, but our audit position is that this is where the overage will go.
- Question #23:** Is it only the non-taxables that are to be filed in the County Assessor's office?
- Answer #23:** Yes, the exemption applications are filed with the assessor and the deduction applications are filed with the auditor.
- Question #24:** Would it be possible for the State to let the auditors know what forms they need for their audit? At the Manatron meeting, it was stated that Manatron had met with Bruce and discussed the forms used in the audit. In changing financial systems one can become overwhelmed with the new forms and printouts. If the auditors have an idea exactly what the field auditor's want, it would be beneficial to the auditor's
- Answer #24:** Yes, this is currently in the process.
- Question #25:** We have not received the March or April collections from the Clerk yet. What can we do?

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- Answer #25:** The clerk is required to remit these collections to you timely. We would suggest you talk to the clerk as to why you have not received these collections and see if there is a good reason. If you cannot get any satisfaction doing that then contact this agency and we will try to address this during the audit.
- Question #26:** Our E911 department leases their building. Can this be paid out of the E911 Fund? What can the fund be used for?
- Answer #26:** No, the lease should not be paid from the E911 Fund. This fund can be used for (1) lease, purchase, or maintenance of enhanced emergency telephone equipment, including necessary computer hardware, software, and data base provisioning; (2) rates associated with the service suppliers' emergency telephone network services; (3) personnel expenses of the emergency telephone system; and (4) lease, purchase, construction, or maintenance of voice and data communications equipment, communications infrastructure, or other information technology necessary to provide emergency response services.
- Question #27:** Can the Communication Director receive a take home car purchased thru E911 funds?
- Answer #27:** No, this is not one of the uses authorized in the statute and as listed in Question #26.
- Question #28:** Should we be changing fringe pay (\$3 per day) to the Prosecutor's Investigator for a county car? He says no, he is under the same jurisdiction as sheriff's deputies.
- Answer #28:** You should contact the Internal Revenue Service for the answer to this question.
- Question #29:** What is HCI tax?
- Answer #29:** Hospital Care for the Indigent
- Question #30:** Is the Treasurer required by law to invest the county's money? If she has not, for the first 5 months of this year, will she be written up? And who has the authority to enforce her to invest if she is required by law to do so? When we question her, she said we were getting more interest by the NOW account than we would have from CD's. After calling the banks in our county we learned that this was not so, and that we had lost thousands of dollars. What do we do?
- Answer #30:** The treasurer is the investing officer for the county but the law does not require the treasurer to invest. We will write the treasurer up for not investing the county funds and losing the county possible revenue. Just like your office, no one can tell the treasurer what to do. The local board of finance is to review their investment policy and report and can formulate an investment strategy that the treasurer should follow.
- Question #31:** What is SBA position on the purchase of Christmas cards out of supplies appropriation by dept. heads or elected officials?
- Answer #31:** Christmas cards purchased out of county funds and under a supply appropriation is not an allowable expenditure and will most definitely will be written up in the audit report.

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- Question #32:** On a city and town court costs fund, IC 33-19-7-3 only says that city/town that prosecutes 50% of ordinance violations, how do we handle these if ordinance violations are done through a small claims referee? Is that considered prosecuted when suit is filed? Suggestions on tracking these?
- Answer #32:** If the ordinance violation is filed as a small claim and assigned a small claim number then it would not be considered prosecuted. It would be considered prosecuted when a suit is filed. We do not have any suggestions for tracking these.
- Question #33:** May a tax lien buyer file a 137B for attorney fees for their deed petition work?
- Answer #33:** Yes
- Question #34:** How do we get the auditor's manual downloaded on our PC?
- Answer #34:** It is in a PDF file. You will need to save it to a file.
- Question #35:** After 3 years, surplus monies from tax sales are put in the General Fund by quietus. Can a taxpayer still come in and file a claim on their money?
- Answer #35:** No, if not claimed within three years from November 10 of year in which payment was made and treasurer has given notice.
- Question #36:** Our county does not have a policy on the use of county owned vehicles. Should this policy be created by the Commissioners?
- Answer #36:** Yes, we recommend the county executive adopt a policy. If any personal or commuting use of county vehicles is to be allowed a policy is required per Auditor's Manual, page 14-9.
- Question #37:** Our county has established a County Economic Development Commission. Our county commissioners have established a fee of \$50.00 for each residential lot platted and recorded. This includes our towns, cities and their buffer zones. Are we in compliance with Home Rule to change these entities? We have no information that the commission has approved this.
- Answer #37:** It appears that you are in compliance with the county's home rule ordinance. You should consult with your county attorney for further clarification.
- Question #38:** Does drug seizure, or drug forfeiture money need to be appropriated through the fiscal body? We understand these funds are at the sheriff's discretion, correct?
- Answer #38:** These funds are spent by the sheriff but are still under the appropriation requirement of the county council.

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Question #39: Our county engineer is paid from the highway budget. His salary is reimbursed \$20,000 from the state. I quietused this money into the highway fund. The highway bookkeeper wants me to put it into the account the engineer is paid from but his whole salary has already been appropriated. I told her no, is this correct?

Answer #39: Yes

Question #40: Commissioners told us if the county vehicle has a county emblem on it, then W2's don't have to be sent out. Is this true?

Answer #40: We do not believe this to be true but you need to contact the Internal Revenue Service for a definitive answer.

Question #41: Does the misdemeanor fund (county corrections) need to be appropriated? The funds are being used for the operation of the jail.

Answer #41: Yes, IC 11-12-6-6 and 7 does not say it can be spent without appropriation therefore you follow the general rule that all disbursements of the county must be by an appropriation.

Question #42: What if judges don't (won't) appropriate the funds out of County User Fee Fund into Jury Pay Fund? The funds would just sit in county user fee fund.

Answer #42: Statute says the county council is to appropriate the County User Fee Fund after the judge requests the jury fees. If the judge does not request it, then it will stay in the County User Fee Fund.

Question #43: How can we get rid of the old mineral rights from our transfer books and tax rolls? We have many that have been taxed for years that are continuing to accrue penalties and now the dollar amount due on the penalties are more than double what the actual taxes are. They have all been in tax sales and never sold so now we don't even enter them in the tax sales.

Answer #43: These can be certified to judgment and collected as personal property under IC 6-1.1-25-(g).

Question #44: Our rescue department (budgeted through Commissioner's budget) and the emergency mgt. budget turn in bills for popcorn, coffee, and pizza dinners at Arnis. I say no, can't use tax dollars for these items? Am I wrong? Also local emergency planning has monthly meetings and buys pizza through their fund? Can you do this?

Answer #44: We do not believe these type of items should be purchased by the county.

Question #45: Employees of county that work at the election at the polls or at the courthouse (inspection team, duplicating team). Do taxes come out of their pay or are they paid by claim?

Answer #45: Taxes are not to be withheld and should be paid by claim.

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- Question #46:** If the counties would notify property owners of any surplus on tax sale properties, do you think this would get the overbid hunters out of the county offices? Could this be changed by legislature?
- Answer #46:** It might help but would the cost of providing the notice be worth the benefit to the county? You could do this without legislative requirement to do so.
- Question #47:** If a piece of property has been on tax sale 2 years and it is now on C list and the commissioners don't want to take deed, what is the best way to get that property back on tax roll so it can be back on tax sale? If someone wants to pay delinquent taxes and get a deed, what process can you do?
- Answer #47:** County has same rights as other purchasers. If no deed is issued to the county and no taxes are paid then the property will be back on the tax sale. If the owner pays then you remove the lien from the property, if another person wants to pay then sell at tax sale.
- Question #48:** Incentive Pay - Prior to 10-1-99, all money was put in County General, 1/3 each to clerk, prosecutor, and county general. To keep track of how much the clerk and prosecutor actually had to spend from there, each month I would treat it as an additional, and then at the beginning of the year the amount they actually had left to spend was put in as a beginning appropriation. There is still a small amount left. Do I still need to keep track of this? Since 10-1-99, this money is supposed to be put into separate funds, which is much easier to keep track of. However, according to the remittance notice, neither our clerk or prosecutor have signed their cooperative agreements so I am instructed to put it all into County General. I do not do this. I keep their payments in separate funds but I have not entered a distribution account number on the computer so we cannot forget and spend it. Exactly what is the cooperative agreements and why wouldn't our clerk and prosecutor what to sign them and get their money?
- Answer #48:** Yes, you need to continue to keep the old incentive money separate from the new because the funds can be spent differently. The cooperative agreement is a computer user agreement. We cannot explain why the clerk or prosecutor has not signed the agreement.
- Question #49:** When the state reimburses the Health Dept for mileage and convention\training expenses, can this money be put back into Health Dept budget without doing an additional? Regarding state called meetings, the Coroners Association pays for conference expenses (room/mileage/food/etc). Our coroner went to a conference and then tried to also turn in claims to the county for reimbursement. Auditors need to be aware of this. All claims were denied and not paid.
- Answer #49:** Yes, since it is a reimbursement it would be quietused back into the health budget. You are correct, if the association is reimbursing the employee then the county should not reimburse also.

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Question #50: Quitclaim Deeds. Does the Auditor's office have the right to reject a Quitclaim Deed if the names are not exact? When we review quitclaim deeds in our office, there has been some confusion as to when we can and cannot accept them when there is an inconsistency with a name and how they are taking title. For example, if we have Sue Ellen Smith in title to a property and a deed comes through with Sue E. Smith quitclaiming her interest to Joe Smith, can we take this because of the fact that it is a Quitclaim Deed and not a Warranty Deed? I know that if it were a Warranty Deed we would send it back. Now, on the other hand if the legal is incorrect, the deed will go back regardless of the fact that it is a Quitclaim Deed or a Warranty Deed.

Answer #50: This is a legal question that should be referred to your county attorney.

Question #51: Can the county misdemeanor funds be used for medical purposes at the jail? ex. Monthly nurse service calls.

Answer #51: Yes, this would be considered costs to operate the jail which is what the statute IC 11-12-6-6 and 7 allow this fund to be spent on.

QUESTIONS AND ANSWERS FROM COUNTY TREASURER'S ANNUAL CONFERENCE

Question #1: Can you shed any light on Weed Cut Certifications? We are receiving one certification a month from the city consisting of 25 to 35 each month. I can't get the city to cite me any code or ordinance as to when we bill these weed cuts. Can you help? Do we bill once a year like sanitation liens even if certified 3-4 times?

Answer #1: Weed statute is IC 36-7-10.1-4. There is no limitation on how often the city can certify these costs and there is no specific time frame that you have to bill these costs. It just says to collect weed liens as other delinquent taxes are collected.

Question #2: Can the Auditor C of E off taxes on a "Leased Land" parcel that has been on tax sale at least 4 times consecutively if there is no structure – only air? Structure was a prefab garage, which was removed. There is nothing for commissioners to take over to sell at commissioner's sale. So they want to remove parcel. What can be done so penalties don't keep accruing and it is always on tax sale?

Answer #2: Yes, these can be removed from the tax duplicate.

Question #3: In years past our County Treasurers did not send out tax notices on gas, oil and mineral rights. The taxes and penalties continue to add up and most of the addresses are unknown. What is the next step for our current treasurer? How can we remove these or incorporate them with the real estate taxes?

Answer #3: IC 6-1.1-25-4(f). These can be moved over as a judgment and when this is done the tax duplicates will no longer reflect the delinquent tax.

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Question #4: After parcels have been certified for tax sale per Indiana Code, can treasurers' office wash hands of sale until time for judge to sign order for sale and of course day of sale? Our County Auditor's office wants to run this show and it's not worth the fight.

Answer #4: Each office has certain responsibilities in the tax sale area. You will want to make sure you are doing your duties. The tax sale process is most efficient when there is complete cooperation between the auditor and treasurer.

Question #5: If county has ever had an investment policy in writing, when is it a good idea to implement one? (i.e. Immediately or have one in place January 1st)

Answer #5: This can be done at anytime but since the local board of finance meets in January that seems to be a good time to do this.

Question #6: Could you comment on the requirements of purchasing CD for total monies? We don't have to write it out of a fund so we have to have Auditor write a check (dual signature) or can we debit account? Does the Auditor have to sign CD to purchase or cash it at maturity?

Answer #6: You can either write a check or have it debited to your account. The auditor does not need to sign the CD when it matures.

Question #7: If you have certified delinquent personal property taxes to the clerk and now want to give these to a collection agency to collect do we first have to file a praecipe? When we mail the demand notice we do include a letter stating a list of delinquent taxpayers may be published in the newspaper or this delinquency may be turned over to a collection agency for collection if not paid. Is this sufficient?

Answer #7: No, you do not need to file a praecipe to turn these over to a collection agency if you are not going to pursue those other remedies. Sending the letter is sufficient.

Question #8: Mobile Home Permits – We have had more than one person come into our office wanting us to issue a permit. They are not moving or transferring title on this mobile home. We believe their intent is only to get a tax clearance. Do we have to issue these permits? Why would we? We would still require all taxes be paid before permit could be issued. Why would someone need this permit? They are not going to the license branch with this permit. Has other counties had this type of problem?

Answer #8: No, you do not have to issue the permit. They may need this permit for financing purposes but by the statute you are not required to do it.

Question #9: We have a property sold at tax sale in 2001. This property is now going for sheriff sale prior to the 1-year redemption period. Can it legally be sold at sheriff sale? If so, do we collect redemption amounts at the sheriff sale? And can we issue a sheriff sale certificate if the redemption amount is not paid?

Answer #9: Yes, it can be sold as at a sheriff sale and you would treat it like a redemption.

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Question #10: Is a praecipe required prior to garnishing any governmental employee?

Answer #10: Yes

Question #11: How can we make a comparison of before and after HB1001 when we don't know what the shelter allowance value would have been?

Answer #11: This is definitely a problem with HB1001 and at this time there is no answer. Hopefully, this issue will be resolved prior to mailing of the tax statements.

Question #12: I have an Innkeeper in our county who has only filed one Innkeeper's Tax since 11/01. Several letters, meetings later, I requested our prosecutor to look into criminal charges per IC 6-8.1-10-7 and his comments were: "It appears that the penalty for failing to meet statutory requirements in this regard is entirely civil and not criminal in nature." Unless other statutes apply my request would be denied. How do we enforce the collection of taxes for Innkeeper's? Are there any other statutes directed toward this problem?

Answer #12: There is a disagreement among attorneys involving the resolution for this problem. Some do not believe anything can be done except for a civil action. Others believe the statute allows remedies similar to what the Department of Revenue can do for state taxes. You need to check with your county attorney for their opinion of how to pursue against this innkeeper.

Question #13: I received a call this week from an employee of our local Indiana Department of Revenue asking if we collected Innkeeper's Tax on campgrounds in our county. When I said no – he indicated he felt we were losing revenue. Does the statute say we can collect tax from campgrounds?

Answer #13: Campgrounds without cabins would not be subject to innkeepers tax. If the campground has cabins, then yes innkeepers tax would have to be collected.